

UNDERTAKING

between

THE SECRETARY OF STATE FOR
SCOTLAND (hereinafter referred to as
"the Secretary of State") of the first
part

and

THE ORKNEY ISLANDS SHIPPING
COMPANY LIMITED incorporated
under the Companies Act, 1948, and
having its registered office at Kirkwall
(hereinafter referred to as "the Com-
pany") of the second part.

WHEREAS it is desired by the parties to make provision for sea transport services serving the North Isles of Orkney as such sea transport services are defined in the Highlands and Islands Shipping Services Act, 1960; THEREFORE IT IS HEREBY AGREED between the parties as follows:—

PART I—GENERAL

Commencement and Duration

1. This Undertaking shall have effect as from the last date hereof, and, subject to the provisions of Clauses 18 and 20 hereof, shall continue in force until the Thirty first day of March, Nineteen hundred and sixty seven, and thereafter from year to year until determined by not less than six months' prior notice in writing given either by the Secretary of State to the Company or by the Company to the Secretary of State.

Provisions as to Board of Directors

2. (1) So long as this Undertaking continues in force—

- (a) the Secretary of State shall have the right to nominate two persons to be members of the Board of Directors of the Company; and
- (b) the members of the said Board shall be British subjects.

(2) The Company shall, during the currency of this Undertaking, pay to its Directors by way of remuneration whether by way of fees or other emoluments (exclusive of vouched expenses incurred by them or any of them) such annual sum as may be agreed between the Secretary of State and the Company in respect of each of its Directors or failing agreement such sum as shall be fixed by the Secretary of State.

Sub-letting

3. It shall not be competent for the Company to assign or otherwise part with any rights or obligations under these presents or the benefit hereof or of the several matters herein contained to any person or company without the prior consent in writing of the Secretary of State.

Disputes

4. If any question, dispute or difference shall at any time arise between the parties in regard to the meaning or construction of any of the clauses herein contained or any matter connected with or arising out of this Undertaking, the same shall be submitted to an arbiter to be mutually chosen or failing agreement to an arbiter appointed on the application of either party by the Sheriff of Caithness, Sutherland, Orkney and Shetland and the award or decree arbitral of such arbiter shall be final and binding upon the parties; declaring that any arbiter appointed shall have power to obtain such skilled assistance as he may, in his discretion, require including without prejudice to the generality power to state a case for the opinion of the Court at any stage of the proceedings.



PART II—SERVICES

Scope of Services

5. The Company undertakes to maintain only such sea transport services as may be approved by the Secretary of State and amended from time to time in accordance with Clause 6 hereof (such services being hereinafter called the "Approved Services") and a current list of such Approved Services, other than services operated in terms of Clause 6 (3) hereof, shall be made available for inspection by the public as the Secretary of State may direct.

Additional, Altered and Discontinued Services

6. (1) Subject to the provisions of paragraph (3) of this Clause the Company shall, if the Company proposes to introduce any additional service, or to alter or discontinue any of the Approved Services or part thereof, give written notice of such proposal to the Secretary of State, and such proposal shall not be put into effect by the Company without the prior consent in writing of the Secretary of State.

(2) The Company undertakes to carry out any additional service or alteration of service which the Secretary of State may require the Company to carry out and which the Company is reasonably capable of carrying out. Subject to receipt by the Company from the Secretary of State of not less than three months' prior notice in writing, any service specified by the Secretary of State in such notice shall be discontinued by the Company.

(3) The Company may, at its discretion, operate any occasional excursion or service or any experimental or temporary service without giving prior notice thereof to the Secretary of State, and such excursion or service or experimental or temporary service shall be deemed to be included in the Approved Services, provided that any experimental or temporary service operated in consequence of this paragraph shall not be so operated by the Company for a period exceeding six months.

Information

7. The Company shall furnish the Secretary of State with such information as he may require from time to time relative to any of its services.

Vessels

8. For the performance of the Approved Services the Company undertakes to provide whether as owner or charterer or otherwise and maintain in good order a sufficient number of good, substantial and efficient vessels each of adequate power and speed, all such vessels to be fully manned and commanded by a skilful Master.

Connections with Other Public Transport Services

9. The Company undertakes at all times to the best of its ability to ensure that the Approved Services connect with other public transport services.

Fair Wages, etc.

10. The Company shall observe and fulfil the obligations specified in the Resolution passed by the House of Commons on Fourteenth October, Nineteen hundred and forty six, namely:—

- (1) (a) The Company shall pay rates of wages and observe hours and conditions of labour not less favourable than those established for the trade or industry in the district where the work is carried out by machinery of negotiation or arbitration to which the parties are organisations of employers and trade unions representative respectively of substantial proportions of the employers and workers engaged in the trade or industry in the district.

(b) In the absence of any rates of wages, hours or conditions of labour so established the Company shall pay rates of wages and observe hours and conditions of labour which are not less favourable than the general level of wages, hours and conditions observed by other employers whose general circumstances in the trade or industry in which the Company is engaged are similar.

(2) The Company shall in respect of all persons employed by the Company (whether in carrying out its part of this Undertaking or otherwise) in every factory, workshop or place occupied or used by the Company for the carrying out of its part of this Undertaking comply with the general conditions required by the said Resolution.

(3) The Company shall recognise the freedom of its workpeople to be members of Trade Unions.

(4) The Company shall at all times during the continuance of this Undertaking display, for the information of its workpeople, in every factory, workshop or place occupied or used by the Company for the carrying out of its part of this Undertaking a copy of the said Resolution.

(5) The Company shall be responsible for the observance of the said Resolution by sub-Contractors employed in the carrying out of this part of this Undertaking, and shall, if required, notify the Secretary of State of the names and addresses of all such sub-Contractors.

PART III—FINANCIAL PROVISIONS

Grant

11.—(1) Subject to paragraphs (2) and (3) of this Clause the Secretary of State undertakes to pay to the Company by way of grant in each year ended Thirty first March (hereinafter referred to as the "financial year") after the commencement of this Undertaking such amount as may be agreed from year to year between the Secretary of State and the Company to be the annual estimated loss incurred in providing the Approved Services after taking into account expenditure properly chargeable in accordance with Clause 15 hereof (hereinafter referred to as "the basic estimated loss"), such amount to be paid in equal instalments monthly in advance commencing on the first day of the month following the commencement of this Undertaking and on the first day of each month thereafter, or otherwise as may be agreed between the Secretary of State and the Company.

(2) If after the end of any financial year it is ascertained from the audited accounts of the Company in respect of the provision of the Approved Services during that financial year that the actual loss, if any, incurred by the Company before taking into account the advances referred to in the preceding paragraph—

(a) exceeds the basic estimated loss, the Secretary of State shall pay to the Company the amount of the difference between the actual loss and the basic estimated loss, such amount to be paid in one sum forthwith;

(b) is less than the basic estimated loss the Company shall pay to the Secretary of State the amount of the difference between the actual loss and the basic estimated loss, such amount to be paid in one sum forthwith.

(3) If after the end of any financial year it is ascertained from the audited accounts of the Company in respect of the provision of the Approved Services during that financial year that a profit has been made on the Approved Services before taking into account the advances referred to in paragraph (1) of this Clause the Company shall refund to the Secretary of State the amount of the said advances, such amount to be paid in one sum forthwith.

(4) During the subsistence of this Undertaking the Company shall, on a date in each year to be specified by the Secretary of State, submit to the Secretary of State estimates of revenue to be received and expenditure to be incurred all by the Company in connection with the Approved Services in respect of such estimate year or years as the Secretary of State may deem necessary and shall furnish to the Secretary of State such detailed information in regard to such estimates as the Secretary of State may require, and such estimates shall be subject to the approval of the Secretary of State and the expenditure by the Company during an estimate year in connection with the Approved Services shall be restricted to the amount of the estimated expenditure so approved for that estimate year. If in the course of an estimate year it appears to the Company that the estimated and approved expenditure for that estimate year might be exceeded the Company shall forthwith advise the Secretary of State to that effect and shall furnish the Secretary of State with such information in regard thereto as he may require and shall seek the approval of the Secretary of State to such increased expenditure. In this paragraph the words "estimate year" mean a period of twelve months from the First day of April, save that the first estimate year shall be deemed to be the period from the last date hereof until the Thirty first day of March, Nineteen hundred and sixty two.

Investments

12. The Company shall place on deposit with any bank all its moneys which from time to time during the currency of this Undertaking shall not immediately be required for the purpose of financing the Approved Services.

Capital Expenditure and Sale of Capital Assets

13. Except with the prior written consent of the Secretary of State—

- (a) the Company shall not enter into any capital commitment in excess of Three thousand pounds in any financial year on any new or existing individual asset used in connection with the Approved Services; and
- (b) the Company shall not sell any individual asset used in connection with the Approved Services and valued in the Company's books at more than Three thousand pounds.

Loans

14.—(1) The Secretary of State undertakes to advance to the Company by way of loan such sums as the Secretary of State considers expedient on such terms as he may approve for specified purposes including the provision of working capital.

(2) The Company may raise loans or obtain advances including advances on bank overdrafts not exceeding Fifty thousand pounds in aggregate excluding sums loaned by the Secretary of State under the foregoing paragraph upon such terms as may be approved by the Secretary of State.

(3) The Secretary of State undertakes to make funds available to the Company as necessary to meet liabilities of the Company arising out of the loans or advances so approved by him, and it is hereby declared that the undertaking given in this paragraph shall subsist until such liabilities have been met notwithstanding the termination of this Undertaking.

Accounts

15.—(1) The Company undertakes to present to the Secretary of State as soon as possible after the end of each financial year, and at such other intervals and in such form as may be required by the Secretary of State, audited accounts of the revenue and expenditure of the Company. Such accounts shall be subject to examination and verification with the Company's relevant books, vouchers and documents by the Secretary of State and also by the Comptroller and Auditor General, if he so desires, and the Company undertakes to procure that the said books, vouchers and documents shall at all reasonable times be open for the inspection of the Secretary

of State and the Comptroller and Auditor General and such persons as the Secretary of State or the Comptroller and Auditor General shall from time to time appoint in writing for the purpose.

(2) In particular such accounts shall show in respect of the Approved Services the balance remaining after deducting from the revenue the amount of expenditure and other charges properly chargeable against revenue or the deficit if the amount of such expenditure and other charges exceeds the revenue.

(3) The following shall be included as revenue in such accounts:—

(a) the actual amount receivable by the Company in the relative year in terms of Clause 11 hereof;

(b) the interest earned on moneys placed on deposit in pursuance of Clause 12 hereof;

(c) any other revenue received by the Company in respect of the Approved Services; and

(d) any gain resulting from the sale of capital assets at a value in excess of that shown in the Company's accounts.

(4) The following shall *not* be included as expenditure in such accounts:—

(a) any expenditure of a capital nature;

(b) except with the prior written consent of the Secretary of State, any expenditure in respect of repairs of the Company's assets, other than in respect of normal maintenance and running repairs (including normal surveys and dry docking of vessels);

(c) any expenditure in respect of a vessel chartered to the Company without the written consent of the Secretary of State;

(d) any taxes the amount of which depends on the income or profit of the Company;

(e) any expenditure in respect of interest on loans or advances made to the Company unless the amount and terms of such loans or advances have been approved in writing by the Secretary of State before such loans or advances were made;

(f) any expenditure which, in the opinion of the Secretary of State, has not been reasonably and properly incurred in connection with the Approved Services and any such expenditure included in such accounts shall at the request of the Secretary of State be deleted therefrom.

(5) The following shall be included as expenditure in such accounts:—

(a) a sum in respect of the depreciation of the Company's assets calculated at such rates and in such manner as may be agreed between the Secretary of State and the Company;

(b) any loss resulting from the sale of any of the Company's assets at below the value shown in the Company's accounts.

(6) The Company shall effect all usual insurances in connection with the operation of the Approved Services and the net premiums paid in respect of such insurances shall be included in the expenditure and any amounts received in respect of any insurances in connection with the operation of the Approved Services (other than those arising in respect of actual, constructive, arranged or compromised total loss or otherwise of a capital nature) shall be credited to revenue. Insurances of vessels taken on charter by the Company from the Secretary of State shall only be effected in terms of the relative charter-parties.

Dividends

16. While this Undertaking is in force, the Company shall not declare nor shall there be paid any dividends on the shares of the Company or any capital dividend.

Rates and Fares

17. While this Undertaking is in force—

- (a) the written approval of the Secretary of State shall be required to the rates and fares to be charged by the Company in respect of the Approved Services other than services specified under Clause 6 (3) hereof;
- (b) the Company may at any time make application to the Secretary of State for a change in approved rates and fares but no such change shall be made without the prior consent in writing of the Secretary of State;
- (c) the Company shall forthwith give effect to any change in such rates and fares which may be required by the Secretary of State, whether or not the Company has made an application to the Secretary of State in respect thereof;
- (d) in exercising his powers under this Clause the Secretary of State shall have regard to (i) the general level of other transport charges, (ii) the financial results of the Company's activities and the amount of grant payable to the Company under this Undertaking and (iii) the effect on the economy of the area served by the Company.

PART IV—DEFAULT BY THE COMPANY

Summary Determination

18. In the event of any substantial breach of this Undertaking or any part thereof by the Company it shall be lawful for the Secretary of State, if he shall think fit, by writing under his hand at any time to put an end to this Undertaking and thereupon the same shall determine and no compensation shall be payable to the Company on account of such summary determination.

Powers to Secretary of State to Maintain Services etc.

19. If the Company shall at any time during the continuance of this Undertaking after receiving not less than two weeks' notice in writing from the Secretary of State unreasonably refuse or neglect to maintain any of the Approved Services specified in such notice, it shall be lawful for the Secretary of State to employ any necessary means for the maintenance of such Approved Services. Nothing in this Clause shall prejudice the rights of the Secretary of State to determine this Undertaking under the last preceding Clause hereof.

PART V—DETERMINATION IN THE EVENT OF HOSTILITIES

20. In the event of hostilities in which Her Majesty is engaged this Undertaking may at any time be determined by not less than six months' prior notice in writing given either by the Secretary of State to the Company or by the Company to the Secretary of State.

The parties consent to the registration hereof for preservation and execution. IN WITNESS WHEREOF these presents consisting of this and the five preceding pages are executed as follows, videlicet:—they are sealed with the Common Seal of the Orkney Islands Shipping Company Limited and are subscribed for and on behalf of the said Company by Sir James Douglas Wishart Thomson, Baronet, and William Work, two of the Directors, and by Donald Sutherland Bertram, the Secretary, all at Kirkwall on the NINETEENTH day of DECEMBER in the year NINETEEN HUNDRED AND SIXTY ONE before these witnesses James Elliot Taylor, Shipping Manager, Thirty six Comely Bank, Edinburgh, 4, and Douglas John Robertson, Shipping Clerk, Braedon, Kirkwall, and they are sealed with the Seal of the Secretary of State for Scotland and subscribed for him

and on his behalf by Matthew Campbell, Secretary of the Department of Agriculture and Fisheries for Scotland, being an officer duly authorised by the Secretary of State to act in that behalf, both at Edinburgh on the TWENTY FIRST day of the said month of DECEMBER in the YEAR LAST MENTIONED before these witnesses David Alexander Leitch and Catherine Bain Forbes, both Civil Servants with the said Department at Saint Andrew's House, Edinburgh, 1.

Signed

J. E. TAYLOR, Witness.

D. J. ROBERTSON, Witness.

D. A. LEITCH, Witness.

CATHERINE B. FORBES, Witness.

Signed

J. D. W. THOMSON, Director.

W. WORK, Director.

D. S. BERTRAM, Secretary.

M. CAMPBELL.